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14
15 UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA
18
19 SAN JOSE DIVISION

20 CENTER FOR BIOLOGICAL DIVERSITY,

21 Case No. 19-cv-01611-EJD

22 Plaintiff,

23
24 **STIPULATION OF SETTLEMENT AND
25 DISMISSAL WITH PREJUDICE**

26 v.

27 U.S. BUREAU OF LAND MANAGEMENT,

28 Defendant.

29
30 IT IS HEREBY STIPULATED by and between the undersigned Plaintiff and Defendant, by
31 and through their respective attorneys, as follows:

32 1. Defendant shall pay \$37,500 (thirty-seven thousand, five hundred dollars and zero
33 cents) to Plaintiff in full and complete satisfaction of Plaintiff's claims for attorneys' fees, costs, and
34 litigation expenses under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, in
35 the above-captioned matter. This payment shall constitute full and final satisfaction of any and all of
36 Plaintiff's claims for attorneys' fees, costs, and litigation expenses in the above-captioned matter,
37 and is inclusive of any interest. Payment of this money will be made by electronic funds transfer or
38 check promptly after notification of the Court's entry of this Stipulation and after receipt of

1 necessary information from Plaintiff in order to effectuate the payment. Defendant will make all
2 reasonable efforts to make payment within thirty (30) days of the date that Plaintiff's counsel
3 provides the necessary information for the electronic funds transfer and this Stipulation is approved
4 by the Court, whichever is later, but cannot guarantee payment within that time frame.

5 2. Execution and filing of this Stipulation of Settlement and Dismissal by counsel for
6 Plaintiff and by counsel for Defendant shall constitute a dismissal of the above-captioned civil
7 actions with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), except that the Court shall retain
8 jurisdiction to enforce the terms of this Stipulation and Dismissal.

9 3. Upon the execution of this Stipulation and Dismissal, Plaintiff, having received the
10 records it requested, hereby releases and forever discharges Defendant, its successors, the United
11 States of America, and any department, agency, or establishment of the United States, and any
12 officers, employees, agents, successors, or assigns of such department, agency, or establishment,
13 from any and all claims and causes of action that Plaintiff asserts or could have asserted in this
14 litigation, or which hereafter could be asserted by reason of, or with respect to, or in connection
15 with, or which arise out of, the specific FOIA request on which this action is based, including but not
16 limited to all past, present, or future claims for attorneys' fees, costs, or litigation expenses in
17 connection with the above-captioned litigation.

18 4. The provisions of California Civil Code Section 1542 are set forth below:

19 "A general release does not extend to claims that the creditor or releasing party does not
20 know or suspect to exist in his or her favor at the time of executing the release and that, if
21 known by him or her, would have materially affected his or her settlement with the debtor or
released party."

22 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by Plaintiff's
23 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all
24 rights Plaintiff may have pursuant to the provision of that statute and any similar provision of federal
25 law. Plaintiff understands that, if the facts concerning any injuries, liability for damages pertaining
26 thereto, or liability for attorneys' fees, costs or litigation expenses are found hereafter to be other
27

1 than or different than the facts now believed by it to be true, this Stipulation shall be and remain
2 effective notwithstanding such material difference.

3 5. The provisions of Clauses 3 and 4 are limited only to claims arising from the FOIA
4 request on which this action is based, and do not apply to any claims or causes of action that Plaintiff
5 asserts or could have asserted or which hereafter could be asserted by reason of, or with respect to,
6 or in connection with, or which arise out of, the agency action that gave rise to the specific FOIA
7 request on which this action is based. This includes but is not limited to the claims and causes of
8 action asserted in *Center for Biological Diversity v. U.S. Bureau of Land Management*, 19-cv-07155
9 (N.D. Cal., 2019) and *Center for Biological Diversity*, IBLA 2020-28 (Interior Board of Land
10 Appeals, 2020).

11 6. The parties acknowledge that this Stipulation is entered into solely for the purpose of
12 settling and compromising any remaining claims in this action without further litigation, and it shall
13 not be construed as evidence or as an admission on the part of Defendant, the United States, its
14 agents, servants, or employees regarding any issue of law or fact, or regarding the truth or validity of
15 any allegation or claim raised in this action, or as evidence or as an admission by the Defendant
16 regarding Plaintiff's entitlement to attorneys' fees, costs, or other litigation expenses under FOIA.
17 This Stipulation shall not be used in any manner to establish liability for fees or costs in any other
18 case or proceeding involving Defendant.

19 7. This Stipulation is binding upon and inures to the benefit of the parties hereto and
20 their respective successors and assigns.

21 8. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable, the
22 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or
23 impaired thereby.

24 9. This Stipulation shall constitute the entire agreement between the parties, and it is
25 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into by
26 the parties hereto. The parties further acknowledge that no warranties or representations have been
27 made on any subject other than as set forth in this Stipulation.

1 10. The persons signing this Stipulation warrant and represent that they possess full
2 authority to bind the persons on whose behalf they are signing to the terms of the Stipulation.

3 11. This Stipulation may not be altered, modified or otherwise changed in any respect
4 except in writing, duly executed by all of the parties or their authorized representatives.

5 12. It is contemplated that this Stipulation may be executed in several counterparts, with a
6 separate signature page for each party. All such counterparts and signature pages, together, shall be
7 deemed to be one document.

8
9 IT IS SO STIPULATED.



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11 DATED: October 13, 2021
12
13 CLARE LAKEWOOD
AMY R. ATWOOD
CENTER FOR BIOLOGICAL DIVERSITY
Counsel for Plaintiff

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15 STEPHANIE M. HINDS
16 Acting United States Attorney
17 Christopher F. Jeu
18 Assistant United States Attorney
19 Attorney for Defendant

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21 Christopher F. Jeu
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20 DATED: October 21, 2021 By: